IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/09/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Criminal R.C. No.892 of 2001

D.Kanakavalli ..... Petitioner

-Vs-

1. R.Shankaranarayanan

2. B.Venkateswaran ..... Respondents

Revision against the order dated 7.12.2000 in C.M.P No.2022 of 2000 in C.C. No.235 of 1999 on the file of the Judicial Magistrate II, Karaikal, Pondicherry.

!For Petitioner : Mrs.Nalini Chidambaram for
M/s.Muthuswamy

^For Respondent 1 : No appearance.

For R2 : Mr.T.Sudanthiram.

:ORDER

Petitioner herein has lodged a private complaint against the respondents herein before the Trial Court for the alleged offence punishable under section 406, 420 and 465 which was taken on file, later, the first respondent herein has filed an application under sec.245(2) Cr.P.C. for discharge of both the respondents which was allowed by the Trial Court, hence, the present criminal revision case.

2. Learned Senior Counsel Mrs.Nalini Chidambaram appearing for the petitioner submitted that the petitioner has handed over share certificates to the respondents on an understanding that he can make use of them for the purpose of availing loan from third parties; that in no circumstance, the share certificates were permitted to be sold; that the petitioner herein did not sign in any of the share certificates or letter of authorisation or power of attorney at any point of time; that the learned Magistrate ought to have held that the respondents herein had prepared the transfer forms by f orging the signature of the petitioner and the attestor thereby misappropriated the sale proceeds of the shares; that the learned Magistrate ought to have dismissed the application for discharge on the ground that the allegation of

forgery can be decided during the trial, but, erroneously allowed the order passed by the learned Magistrate is a non-speaking order.

3. Learned counsel Mr.Sudanthiram appearing for the second respondent submitted that the petitioner herself has admitted in the complaint that she had handed over the share certificates to the first respondent in order to discharge the loan of the second respondent; that the petitioner has also executed an affidavit enabling for sale of the share certificates; that the said affidavit is a self-explanatory to show that the transfer/sale of shares were effected with her consent; that even prior to the transfer of shares, the concerned company has issued notice to the petitioner, but, she has not protested to the same and as she was aware of the said transfer, the transfer of shares was a genuine one and that the complaint was a later thought. The learned counsel further submitted that there is no prima facie case made out against the respondents, hence, the learned Magistrate, in exercise of sec.245(2) Cr.P.C. has rightly allowed the petition for discharge. The learned counsel for the second respondent has relied on the following decisions:-

(i) ASHOK CHATURVEDI v. SHITUL H.CHANCHAN (1998 CRI.L.J. 4091) wherein the Honourable Supreme Court has held in paragraphs 5 and 6 that

"5. But the question yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of the Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We are clearly of the opinion that the necessary ingredients of any of the offences have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the complainant on oath as

well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion, even if the allegations made in the complaint petition and the statement of the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code cannot be said to have been made out. This being the position, the impugned order of the Magistrate taking cognizance of the offence dated 5-2-1 996 so far as it relates to the appellants cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5-2-199 6 taking cognizance of the offence as against the appellants stand quashed.
6. It is true that out of 9 officials of the Company who are the accused persons in the criminal case, only 7 of them have preferred this special leave petition and R.K. Sharma, Whole-time Director, as well as Capt. G.P.S. Choudhary, Director of the Company have not preferred the special leave petition. But in view of our conclusion, allegations in the complaint petition do not make out any offence against any of the officers of the Company, it would be futile to allow continuance of the criminal proceedings so far as the said two officers of the Company are concerned."

(ii) S.W.PALANITKAR v. STATE OF BIHAR (2002 SCC (Cri) 129) wherein the Honourable Apex Court has held in para 23 that
"Many a times, complaints are filed under Section 200 Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, to pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on the criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on the criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of Sections 200-203 Cr.P.C. keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in a routine manner."

3. Points for consideration in this criminal revision case are
(i) whether the allegations made in the private complaint together with the sworn statement of the complainant made out a case for the alleged offences under sec.406, 420 and 465 IPC; and
(ii) whether the order passed by the court below discharging the respondents under sec.245 is valid or not.
4 In this case, the petitioner herein has alleged that she has signed an affidavit prepared by the accused and prescribed forms for updating her specimen signature addressed to the respective companies. It is further

alleged by her that in the third week of March 1999, the complainant received a sale note from the second respondent stating that the shares had been sold by her in his favour, subsequently, she allegedly contacted the first respondent who had given a false assurance that he would return all her scrips. Later, she allegedly enquired about the fate of her shares, but, to her shock, she learned that both the accused prepared deeds of transfer forms forging her signature and misappropriated for their use.

5. No valid evidence was placed before the learned Magistrate to substantiate the allegation of criminal breach of trust, cheating and forgery. As rightly pointed out by the learned counsel appearing for the second respondent, the company itself has sent an intimation prior to effecting the transfer in the name of the second respondent, to the petitioner, but, she has not chosen to oppose the same for the reasons well known to her.

6. On a perusal of the affidavit of the petitioner herein, one could easily understand that she has delivered the share certificates with necessary authorisation to sell and use the sale proceeds to discharge the loan amount due to the second respondent. The said affidavit was also duly notarised as early as January 1999 and also letters were sent by the petitioner to the respective companies stating that the shares were sold and requested them to transfer the shares in favour of the second respondent. The sworn statement of the petitioner did not improve her case in any manner.

7. The learned Magistrate who had taken the complaint on file failed to note that the complaint and sworn statement do not satisfy the ingredients of the alleged offences under sec.406, 420 and 465 IPC. The learned Magistrate who allowed the discharge petition has rightly pointed out that the allegations made in the complaint and sworn statement of the petitioner herein, taken on their face value, do not make out the alleged offences.

8. Under sec.245 Cr.P.C. a Magistrate may discharge the accused at any stage when he is satisfied that the charge against the accused is groundless. Sec.245(2) Cr.P.C. gives unfettered discretion to the Magistrate to discharge the accused for the reasons to be recorded by him that the charge is groundless even before recording any evidence under sec.244(1). The first respondent herein filed a petition to discharge himself and the second respondent herein. The Trial Court has recorded reasons for discharging both the respondents. However, in the operative portion of the order, it is stated by the Trial Court that the first respondent is discharged. With regard to the above aspect, no argument was advanced by either the petitioner or the second respondent herein. I find sufficient materials in the order passed by the learned Magistrate for discharging both the respondents.

9. Power under sec.482 Cr.P.C. has to be exercised sparingly by the High Court that to in the interest of justice. Allowing a criminal proceeding to continue when the allegations do not make out any offence would amount to abuse of process of court. In such a case, the power shall be exercised by the High Court. The High Court shall not interfere with an order of discharge where there is no error or clear defect in the proceedings or other illegality which has resulted in grave injustice.

10. Coming to the impugned discharge of the respondents, I notice that the learned Magistrate has recorded finding for her conclusion which is based on appreciation of evidence. Hence, no interference is warranted.

11. In the result, the criminal revision case is dismissed.

Index: Yes
Internet: Yes
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To
Judicial Magistrate II,
Karaikal,
Pondicherry.